IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7238 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT & 1 - Appellant(s)
Versus
ASHOKKUMAR SIDDHNATHA DUBEY & 1 - Defendant(s)

==========

Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1,
MR NV GANDHI for Defendant(s) : 1,
RULE UNSERVED for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

Present appeal under section 96 of the Civil Procedure Code has been filed by the State of Gujarat and another challenging the judgment and decree passed by the

learned City Civil Court at Ahmedabad dated 29-12-94 passed in Civil Suit No.4067 of 1985 in partly allowing the said suit directing the appellants herein, original defendants (hereinafter referred to as “the defendants”) not to dispossess the respondents herein, original plaintiffs (hereinafter referred to as “the plaintiffs”) from the suit property without due process of law.

2. The plaintiff filed Civil Suit No.4067 of 1985 in the learned City Civil Court at Ahmedabad against the defendants for permanent injunction restraining the defendants from pulling down the superstructure of suit Ordi and from taking possession of the suit land and from obstructing the defendants from taking possession of the suit property.

3. It is averred in the suit by the plaintiff that he is in possession of the suit room bearing survey No.232-B-173 of Amraiwadi, B/h Rabarivas in Shashtrinagar, Ahmedabad and initially he was occupying the said room as a tenant of Babubhai and Govanbhai, but on 21-1-1983, he purchased the suit property but no sale deed was executed as permission under the Land Ceiling Act was to be obtained. It was further averred in the suit that on

eastern side of the suit property after leaving upon marginal land of the plaintiff, there is a by-pass road i.e. National Highway No.8. It was further averred in the suit that on 7-10-1985, the defendant No.2 had come to the suit room and informed the plaintiff that he wants to get possession of the land after pulling down the construction of the suit shop and therefore, plaintiff should remove the superstructure within two days, failing which superstructure will be pulled down. It was further averred in the suit that no written notice has been given to the plaintiff and that no proceedings for acquisition of the said property have taken place and that defendants have no right to take possession of the suit land and therefore, it was requested to allow the suit by issuing permanent injunction.

4. The suit was resisted by the defendants by filing written statement, Exh-17. It was contended on behalf of the defendants that the Court has no jurisdiction to try the suit; that the plaintiff has constructed shed over Government land on Narol-Naroda road by encroaching upon Government land; that in front of the said property, there is land which is used for road; that it was decided to construct cycle track and 2.30 mtr footpath from the

grant approved by the Central Government and accordingly construction work is in progress; that there is 30 mtr road land on both the sides from the centre point and the shed of the plaintiff is constructed on the Government land. It was further submitted that in fact the land was acquired for the purpose of National Highway road No.8 and the award was also declared. Therefore, it was requested to dismiss the suit.

5. The learned trial Court framed the issues at Exh-29. The plaintiff examined himself at Exh-39, on behalf of the defendants, Asst. Engineer Dineshbhai Maganbhai Patel was examined at Exh-44, rent receipts were also produced at Exhs 34 and 35, village form No.7/12, Exh-41, plan prepared by the Executive Engineer, Exh-50, award for acquisition of the land, Exh-51 and measurement sheet prepared by the Executive Engineer, Exh-52. On appreciation of the evidence oral as well as documentary, the learned trial Court held that the defendants have failed to establish that the suit land has been acquired by the Government. The learned trial Court also held that one Shardaben was the owner of land bearing survey No.232-B and the suit shop was on some portion of survey No.232-B, which was original belonging to Shardaben and

the defendants have not produced any documentary evidence to show that this portion of land of survey No.232-B has been acquired by the State Government and accordingly, the learned trial Court issued the permanent injunction as prayed for. Being aggrieved by the judgment and decree passed by the learned trial Court in issuing permanent injunction in the aforesaid suit,the defendants have preferred the present first appeal.

6. Shri KL Pandya, learned AGP appearing for the State has submitted that in fact land admeasuring 3025 sq yard from the land bearing survey No.232, originally belonging to Shardaben, have been acquired under the provisions of the Land Acquisition Act for construction of Narol-Naroda by-pass National Highway No.8 and at the relevant time, land bearing survey No.232 was not divided in two parts i.e. survey No. 232-A and 232-B and 3025 sq yard from the road side of survey No.232 have been acquired for which award came to be declared on 23rd June 1971 and therefore, the learned trial Court has committed an error in holding that the defendants have failed to prove that the land from survey No.232-B have been acquired by the Government. It is submitted by him that after considering the map and other documentary evidence, the learned trial

Court ought to have held that land/shop occupied by the plaintiff is a land, which was acquired by the State Government which has been encroached upon by the plaintiff and therefore, it is requested to allow the present appeal quashing and setting aside the judgment and decree passed by the learned trial Court.

7. On the other hand, Shri NV Gandhi, learned advocate appearing on behalf of the plaintiffs while supporting the judgment and decree passed by the learned trial Court, has submitted that considering the oral as well as documentary evidence, the learned trial Court has rightly decreed the suit and issued the permanent injunction by holding that the defendants have failed to prove/ establish that any land from survey No.232-B has been acquired. It is submitted that when the plaintiff's shop is situated on land bearing survey No.232-B and in absence of any material that any portion of the land of survey No.232-B has been acquired by the Government and when it is found that the plaintiff was in possession of the superstructure and the land, the learned trial Court has rightly decreed the suit and therefore, it is requested to dismiss the present appeal.

8. Heard the learned advocates appearing on behalf of the parties.

9. This Court has gone through the relevant records. Shri Pandya, learned AGP has also produced on record the relevant documentary evidence such as village form No.7/12, plan for the road prepared by the Executive Engineer (Exh-50), map, xerox copy of the award for acquisition (Exh-51) and the measurement sheet prepared by the Executive Engineer (Exh-52). On going through the award declared by the 3rd Special Land Acquisition Officer (District), Ahmedabad dated 23rd June 1971, it appears that 3025 sq yard of land from survey No.232 along with other lands have been acquired under the provisions of the Land Acquisition Act for construction of Naroda-Narol by-pass National Highway No.8 and proposal was submitted for acquisition of the said land as far as back on 15th March 1956 and a part award for the survey numbers coming in the alignment was declared on 28th March 1965 and for rest remaining land coming under the road alignment, the award was declared in 1971. It appears that section 4 notification was issued in the year 1956 and section 6 notification was published in the year 1957. It appears from the record that at the time when the land was

acquired, there was only one survey number i.e. 232 and it appears that subsequently after the aforesaid acquisition, survey No.232 was divided in two parts i.e. 232-A and 232-B. However, the fact remains that from the right side, 3025 sq yard from land bearing survey No.232 has been acquired. When survey No.232-B is on the road side, naturally 3025 sq yard from the road side is acquired. It appears that the plaintiff has encroached upon the land which is acquired by the State Government for the purpose of road after the acquisition was over and has constructed the shop and is trying to take advantage of division of survey No.232 by submitting that survey No.232-B has not been acquired. However, as stated above, at the time when the acquisition proceedings were initiated and completed, there was only one survey No.232 and from the award declared under the Land Acquisition Act, it is very much clear that 3025 sq yard from survey No.232 on the road side has been acquired. Under the circumstances and considering the documentary evidence such as award, measurement sheet, map, plan etc., it cannot be said that the defendants have failed to establish/prove that the shop land occupied by the plaintiff has not been acquired. On the contrary, considering the documentary evidence, it is crystal clear

that the land and the superstructure/shop occupied by the plaintiff has been acquired by the State Government for which the award was declared in the year 1971. Thus, 3025 sq yard from land bearing survey No.232 has been acquired by the State Government and the plaintiff has no right to continue over the said land and therefore, the learned trial Court has committed an error in decreeing the suit and issuing the permanent injunction and considering the oral as well as documentary evidence and the reasons as stated above, the judgment and decree passed by the learned trial Court is required to be quashed and set aside.

10. Accordingly, the present first appeal is allowed. The judgment and decree passed by the learned City Civil Court at Ahmedabad dated 29-12-1994 is quashed and set aside and Civil Suit No.4067 of 1985 filed in the learned City Civil Court at Ahmedabad is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(M.R.SHAH,J.)

shekhar/-